

McCULLOCH | KLEINMAN
INTELLECTUAL PROPERTY ATTORNEYS

October 1, 2020

VIA ECF

Hon. Lorna G. Schofield
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Kennedy v. Welcome, et al.*, No. 20-cv-06149-LGS

Dear Judge Schofield,

This firm represents Plaintiff Stephen Kennedy in the above-referenced action. I write pursuant to the Court's initial pretrial conference order (Dkt. No. 10) requiring the parties to provide a joint letter and proposed case management plan by today's date. Unfortunately, Defendants James Welcome and The Law Offices of James A. Welcome, LLC (together "Defendants") have not yet been effectively served, and it appears they are deliberately evading service. I have attached to this letter affidavits of due diligence from our professional process server, showing that numerous attempts have made to serve Defendants, both at their registered office and residential addresses (as listed on the Connecticut state business registry). Plaintiff's counsel also has made repeated attempts to contact Defendants by phone and email – including a request to waive formal service – all of which have been ignored.

Plaintiff thus respectfully requests that the Court adjourn the conference currently scheduled for October 8 to November 5, 2020, in order to allow additional time for service.¹ This is the first request for an adjournment in this case, and it will not affect any other deadlines.

Additionally, Plaintiff respectfully requests an order from the Court allowing for service to be effected by alternate means, namely via email (JWelcome@welcomelawfirm.com) and first class mail to Defendants' registered office address, 80 Central Avenue, Waterbury, CT 06702. The New York Civil Practice Law and Rules (CPLR) allows for service "in a manner directed by the court if [traditional means of service] are impracticable." CPLR § 308(5). As a result of the COVID-19 pandemic, personal service has been impracticable for the last several months.

Defendant Welcome is an attorney and is registered for ECF filings through the email address JWelcome@welcomelawfirm.com in numerous district court cases, as recently as 2018. *See Calle-Crespo v. Sessions, et al*, No. 3:18-cv-00717-SRU (D. Conn. 2018). This is also the email address at which Plaintiff's counsel initially contacted Defendants demanding that the photographs at issue in this case be taken off Defendants' website, which subsequently was done. Undersigned

¹ The complaint in this action was filed on August 6, 2020 (Dkt. No. 1.), and thus the 90-day deadline to effect service under F.R.C.P. 4 is not until November 4, 2020.

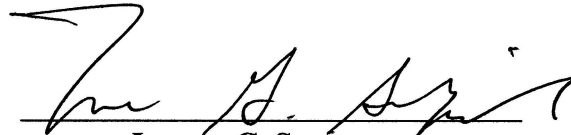
counsel also confirmed with Defendant's secretary by phone that both this email and office addresses were correct. As such, there is no doubt that such means of service would be effective in providing fair notice to Defendants of Plaintiff's claims against them in this lawsuit. If Plaintiff's request is granted, Plaintiff will effect service immediately and file a sworn affidavit attesting to such service.

The application is GRANTED in part. Sufficient cause having been demonstrated, Plaintiff shall serve the summons, complaint and a copy of this Order on Defendants by email to JWelcome@welcomelawfirm.com and first class mail to Defendants' registered address, 80 Central Avenue, Waterbury, CT 06702. By **October 5, 2020**, Plaintiff shall file proof of such service.

The conference scheduled for October 8, 2020, is **adjourned to October 29, 2020, at 10:30 a.m.**, on the following conference call line: 888-363-4749, access code 558-3333. The time of the conference is approximate but the parties shall be ready to proceed by that time. The parties are reminded that their joint letter and proposed case management plan are due seven days prior, or October 22, 2020.

SO ORDERED

Dated: October 2, 2020
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Respectfully submitted,



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